

Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 10400
SECOND DIVISION Docket No. 10064
2-SOU-CM-'85

The Second Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the
(United States and Canada
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(Southern Railway Company

Dispute: Claim of Employees:

1. That Carman R. C. Denton, Cincinnati, Ohio was unjustly suspended from service from September 1, 1981 to September 30, 1981.
2. That the Carrier be ordered to pay Carman R. C. Denton for all time lost both regular and overtime while suspended from service, plus 6% interest.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Carman R. D. Denton, the Claimant, is employed at the Carrier's Gest Street Yard in Cincinnati, Ohio. On August 10, 1981, Carrier's General Foreman Mullins held a preliminary investigation in which the Claimant was charged with excessive absenteeism, habitual tardiness, and failure to protect his assignment. He was assessed sixty (60) days suspension from service. Claimant disagreed with this disciplinary action and requested a formal investigation pursuant to Rule 34(c). Following the investigation, which was held August 28, 1981, the Claimant was notified by letter that the evidence proved him guilty of the charges, and that a 30-day disciplinary suspension would be assessed from September 1, 1981 until September 30, 1981.

The transcript of the investigation reveals that Claimant failed to work all or part of his assignment on four occasions during the 30-day period preceding August 10, 1981. On July 12, 1981, Claimant reported for work, and then thirty minutes later claimed that he had a stiff neck and had to go home. On July 29th, Claimant reported off due to a rash on his hand. Exhibits entered at hearing indicate that Claimant obtained three statements from physicians who treated him for his skin condition. Although the statements confirm that Claimant did indeed have a rash on his hand on July 29, it was merely recommended that Claimant wear rubber gloves to protect his skin from welding burns. There was no indication from any of the physicians' statements that the rash rendered Claimant unfit for his work assignment.

On August 8, 1981, Claimant was thirty minutes late reporting for work. At the time, he gave no reason or excuse for his tardiness. During the formal investigation, however, Claimant asserted that he had experienced car trouble on that date. The next day, August 9, 1981, Claimant reported off and gave no reason for his absence until the date of hearing when he claimed that he had been struck in the face with a toy by his child.

Claimant's past attendance record, relied upon by the Carrier in assessing the level of discipline, shows that Claimant was absent from his assignment on sixty-one (61) occasions prior to this investigation for various reasons, including his own and his wife's illness, car trouble, weather, etc. Claimant was repeatedly warned about his absences, and had been suspended a total of twenty (20) days in the past for the same offense.

The Carrier contends that the evidence adduced at the investigation fully established that Claimant was guilty of the charges against him. In taking into consideration the seriousness of the proven charges, as well as Claimant's unsatisfactory past record of absenteeism and tardiness for which he had been warned, the disciplinary action taken was warranted and justified.

The Organization takes the position that Claimant was unjustly dealt with when he was assessed a thirty (30) day suspension, and that such action on the part of the Carrier violates Rule 34 which provides that discipline will not be imposed except where there is just and sufficient cause. Moreover, the Organization argues that each time Claimant was absent, he complied with Rule 30(a) of the Agreement, which states:

"(a) In case an employee is unavoidably kept from work, he will not be discriminated against. An employee detained from work on account of sickness or for any other good cause shall notify his foreman as early as possible."

Since, according to the Organization, the Claimant notified his foreman of the absences in question in accordance with the above rule, the Carrier's imposition of discipline in this case was arbitrary, capricious, and an abuse of its managerial powers.

Upon a thorough examination of the record, the Board finds the summarized evidence overwhelmingly substantial with regard to Claimant's excessive days of absenteeism and tardiness. It should be emphasized that Rule 30(a), cited by the Organization, has little relevance here because the issue is Claimant's absenteeism, and not whether he notified the Carrier of his absences. Prior awards of this Board have often set forth the principle that notification of absence may not be used in defense of an employee's excessive absenteeism. (For example, see Second Division Awards 7748, 7803, 8876). Thus, Claimant's excuses, some of which were not even offered until the time of the investigation, do not justify his failure to report to work regularly and on time. It is beyond cavil that the obligation is on the employee to protect the Carrier's service on the days he is assigned to work, and failure to do so is sufficient grounds for discipline, including dismissal. (See this Division Awards 6710, 8216, 7348). The record reflects that Claimant was afforded opportunities in the past to improve his absentee record, but to no avail. We cannot find any evidence whatsoever that the Carrier was biased, arbitrary, capricious or unreasonable in assessing the level of discipline imposed here. Therefore, we must deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 22nd day of May, 1985.